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## Post-Construction Storm Water Management in New Development & Redevelopment

### Conservation Easements

#### Description

Conservation easements are voluntary agreements that allow an individual or group to set aside private property to limit the type or amount of development on their property. The conservation easement can cover all or a portion of a property and can either be permanent or last for a specified time. The easement is typically described in terms of the resource it is designed to protect (e.g., agricultural, forest, historic, or open space easements) and explains and mandates the restrictions on the uses of the particular property. Easements relieve property owners of the burden of managing these areas by shifting responsibility to a private organization (land trust) or government agency better equipped to handle maintenance and monitoring issues.

Conservation easements are thought to make a contribution to protecting water quality, mostly in an indirect way. Land set aside in a permanent conservation easement is land that will have a prescribed set of uses or activities, generally restricting future development.

The location of the land held in a conservation easement may also determine if it will provide water quality benefits. Property along stream corridors and shorelines can act as a vegetated buffer that may filter out pollutants from storm water runoff. The ability of a conservation easement to function as a stream buffer is related to the width of the easement and in what vegetated state the easement is maintained (see Buffer Zones fact sheet).

#### Applicability

Conservation easements are typically done to preserve agricultural lands and natural areas that are facing development pressure on the suburban-rural fringe. For

rapidly urbanizing areas, conservation easements may be a way to preserve open space before land prices make the purchase of land containing important cultural and natural features impractical for governmental agencies with limited budgets. Conservation easements are not often used in ultra-urban areas, due to both the lack of available open space for purchase and the high cost of undeveloped land. In addition, private land trusts may limit the size and type of the land that they are willing to manage as conservation easements.

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the land that they are willing to manage as conservation easements.

**Implementation**

Conservation easements are designed to assure that the land is preserved in its current state long after the original owners no longer control the property. By agreeing to give up or restrict the development rights for a parcel of land, a landowner can guarantee that their property will remain in a prescribed state for perpetuity while receiving tax benefits. Often, state agencies and private land trusts have specific qualifications for a property before they will enter into an easement agreement with land owners. Table 1 contains examples of criteria that are used by private land trusts to determine if a property is worth managing in a conservation easement.

Table 1: Typical criteria that land trusts use to determine feasibility of entering into conservation easement agreement

Criteria	Details
Natural resource value	Does the property provide a critical habitat or important environmental aspects worth preserving?
Uniqueness of the property	Does the property have unique traits worth preserving?
Size of land	Is the land large enough to have a natural resource or conservation value?
Financial considerations	Are funds available to meet all financial obligations?
Perpetuity	Is the conservation agreement a perpetual one?
Land trust's mission	Does the property align with the land trust's mission and the organization's specific criteria?

Conservation easements have been used in all parts of the country, and many private groups, both nationally and locally, exist to preserve natural lands and manage conservation easements. States also use conservation easements and land purchase programs to protect significant environmental features and tracts of open space. Maryland is one state that has been nationally recognized for its programs that provide funding for state and local parks and conservation areas. The state is one of the first to use real estate transfer taxes to pay for land conservation programs. Several programs are funded through this transfer tax of one-half of one percent (\$5 per thousand) of the purchase price of a home or land, or other state funding programs. Conservation programs include:

- *Program Open Space.* This program is responsible for acquiring 150,000 acres of open space for state parks and natural resource areas and more than 25,000 acres of local park land. Every county must create a Land Preservation and Recreation Plan that outlines acquisition and development goals in order to receive a portion of the 50 percent that is granted to local governments (MDNR, no date).
- *Maryland Environmental Trust.* This trust is a state-funded agency that helps citizen groups form and operate local land trusts and offers the land trusts technical assistance, training, grants for land protection projects and administrative expenses, and participation in the Maryland Land Trust Alliance (MDNR, 2001a).
- *Rural Legacy Program.* This program is a Smart Growth Initiative that redirects existing state funds into a focused and dedicated land preservation program specifically designed to limit the adverse impacts of sprawl on agricultural lands and natural resources. The program purchases conservation easements for large contiguous tracts of agricultural, forest, and natural areas subject to development pressure, and purchases fee interests in open space where public access and use is needed (MDNR, 2001b).

Regardless of whether a conservation easement is held by a government agency or a private land trust, certain management responsibilities must be addressed by the easement holder. The following is a list of some of these management duties:

management duties:

- Ensure that the language of the easement is clear and enforceable.
- Develop maps, descriptions and baseline documentation of the property's characteristics.
- Monitor the use of the land on a regular basis.
- Provide information regarding the easement to new or prospective property owners.
- Establish a review and approval process for land activities stipulated in the easement.
- Enforce the restrictions of the easement through the legal system if necessary.
- Maintain property/easement-related records.

**Limitations**

A number of limitations exist for using conservation easements as a storm water management tool. One is that there is no hard evidence that conservation easements actually do protect water quality. Another is that conservation easements are often not an option in more urbanized areas, where the size, quality, and cost of land can restrict the use of easements. Easements might also not be held in perpetuity, which means that land could still face development pressure in the future. Easements also may not provide for the filtering of pollutants from concentrated flows. More information on the filtering potential of stream buffers can be found in the Buffer Zones fact sheet.

**Maintenance Considerations**

The responsibility for maintenance of property in a conservation easement depends on the individual agreement with a land trust or agency. While many organizations assume the responsibility for managing and monitoring a property, some land trusts leave maintenance responsibilities to the landowner and act only to monitor that the terms of the easement are met.

**Effectiveness**

The pollutant removal efficiency of a conservation area will depend on how much is conserved, the techniques used to conserve it, and the specific nature of the easement. Conservation easements are assumed to contribute water quality benefits, but no national studies proving this have been released.

**Cost Considerations**

Table 2 summarizes the costs of maintaining green spaces with different types of uses.

Table 2: Annual maintenance costs of different types of green space uses (Adapted from CWP, 1998)

Land Use	Approximate Annual Maintenance Costs
Natural open space Only minimum maintenance, trash/debris cleanup	\$75/acre/year
Lawns Regular mowing	\$270 to \$240/acre/year
Passive recreation	\$200/acre/year

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